grounds of defense, filed under section 3249 of the Code, cannot avail. *Farmers etc. Ass'n* v. *Kinsey* (Va.), 43 S. E. 338.

In the same case it is held that a claim of forfeiture because of non-payment of assessments having been interposed by defendant, and plaintiff relying upon a waiver of same, the evidence considered and held to estop defendant from asserting the forfeiture. Citing *Insurance Co.* v. *Norton*, 96 U. S. 234; *Insurance Co.* v. *Eggleston*, 96 U. S. 572; *Thompson* v. *Insurance Co.*, 104 U. S. 252; *Insurance Co.* v. *Unsell*, 144 U. S. 439; *Insurance Co.* v. *Kinnier*, 28 Gratt. 88, 108; *Insurance Co.* v. *Punky*, 91 Va. 259; *Monger* v. *Insurance Co.*, 96 Va. 442.

It was also held that where an erroneous instruction has been given, and the appellate court can see from the whole record that, even under correct instructions, a different verdict could not rightly have been rendered, or that exceptant could not have been prejudiced by the erroneous instruction, it will not for such error reverse a judgment upon the verdict rendered.

It is pertinent at this point to call attention to a recent cognate ruling of the Supreme Court of Appeals of Virginia that an instruction which calls special attention to a part only of the evidence and the facts which it tends to prove, and leaves out of view other evidence in the cause, is misleading, and should not be given. *Southern Ry. Co.* v. *Aldridge's Admx.* (Va.), 43 S. E. 333. Following *R. R. Co.* v. *Cromer's Admr.*, 99 Va. 763; *Boush* v. *Deposit Co.*, 100 Va.; 42 S. E. 877.

CRIMINAL PRACTICE—INDICTMENT—ALLEGATION THAT DECEASED WAS A HUMAN BEING.—The Supreme Court of California in *People* v. *Lee Look*, 70 Pac. 660, has gone so far as to sustain a demurrer to an information for murder because it did not state that the deceased was a human being. It is difficult to restrain a smile when we read the court's own statement that it had overruled a similar contention in another case where the name of the deceased was "James Collins," and it was objected that this might mean a horse as well as a person; and that a like contention had also been made in still another case as to the name "Greek George," and overruled, the court stating that "it was not necessary to allege that the deceased was a sentient being, . . . for the killing of any other kind of creature would not be murder." In the principal case, the name of the deceased happened to be Lee Wing, doubtless a Chinaman. The learned court says: "It will be noticed that in this information the thing killed, Lee Wing, is not averred to have been a human being; that the crime of which he is sought to be charged is not stated to be 'murder,' that there is no averment that he did 'kill and murder' Lee Wing; that the word 'murder' nowhere appears in the document, nor does the latter contain any other language, which necessarily implied that the appellant killed a human being."

The information charged that the defendant "unlawfully and with malice and aforethought killed Lee Wing." We suppose that a fair conclusion from the several rulings of the court, as stated above, is that a dead Caucasian may be presumed to have been a human being, but in the case of a Chinaman, owing doubtless to the allegations of members of his race that they are of celestial origin, this must be averred and proven. Had the court wished authority other than its own decisions, to an opposite effect, it could have found them in *Merrick* v. *State*, 63 Ind. 327; *State* v. *Stanley*, 33 Iowa, 526; *State* v. *Smith*, 38 La. Ann. 301; *State* v.

Day, 4 Wash. 104, 29 Pac. 984; *Reed* v. *State*, 16 Ark. 499; *Perryman* v. *State*, 36 Tex. 321. In *Wade* v. *State*, 23 Tex. App. 308, the question was held to be one of proof, not pleading, and the fact that the alleged name of deceased was an unprecedented one, to be immaterial.

OSTEOPATHY—PRACTICING MEDICINE WITHOUT LICENSE—The Supreme Court of Alabama has decided, in *Bragg* v. *State*, 32 South. 767, that a practitioner regularly educated and graduated from a college, which has the name of the "American School of Osteopaths," and holding a diploma from that institution, and who treats his patients by manipulation of the limbs and body with his hands, by kneading, rubbing, or pressing upon the parts of the body, in which treatment no drug, medicine, or other substance is administered either internally or externally, nor is the knife used, nor any form of surgery, is "practicing medicine," within the provision of a statute requiring a person so practicing to obtain a certificate from a board of medical examiners; the statute clearly indicating that it was not the legislative intent to restrict the examination to those intending to practice medicine by prescribing drugs, but to include all who practice the art of healing, whatever the reputed therapeutic agency employed.

The Supreme Court of North Carolina, on the other hand, in *State* v. *MacKnight*, 42 S. E. 580, has decided that the practice of osteopathy is not the practice of medicine or surgery as commonly understood, and therefore it is not necessary to have a license from the board of medical examiners before practicing it. In its opinion the court states "that if it is a fraud and imposition, and injury results, the osteopath is liable both civilly and criminally. Certainly baths and diet could be advantageously prescribed to many people. Rubbing is well enough if the patient is not rubbed the wrong way. The real complaint is that osteopaths restrict themselves to these remedies and do not resort to drugs and surgery; but that very fact establishes that they do not violate the law requiring a license to practice medicine and surgery. Doubtless there is an appeal to the imagination, but who does not know that a prescription by a physician in whom the patient has implicit confidence is oftentimes more effective than the same treatment by one in whom he has none, and that at times bread pills and other harmless prescriptions are administered with good results?"

MUNICIPAL CORPORATIONS — POLICEMEN — REMOVAL—RIGHT TO NOTICE.—An appointment which can be terminated for cause is not an appointment at will, but is for a definite term, and entitles the incumbent to notice of any charges preferred against him and to an opportunity to be heard. A statute authorized the board of street commissioners of a town to appoint policemen to serve under the regulations of the street commissioners, and further provided that "said policemen shall be subject to removal for cause." The relator was discharged by the board without notice. *Held*, that an order requiring the board to reinstate him must be affirmed, without prejudice, however, to the right of the commissioners to proceed in a proper way to exercise their power of removal. *Board etc.* v. *Williams* (Md.), 53 Atl. 923. Citing *Andrews* v. *Board* (Me.), 46 Atl. 801; *Gaskins' Case*, 8 Term R. 209; *Field* v. *Com.*, 32 Pa. 478; *State* v. *Bryce*, 7 Ohio, 82, pt. 2; Dillon's Mun.